IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Excise Appeal No. E/212/2009

(Arising out of Order-in-Original No.14/CE/Commr./Kol-VI/2008 dated-31/12/2008 passed by the Commissioner of Central Excise, Kolkata-VI).

Commr. of Central Excise, Kolkata

Applicant (s)/Appellant (s)

Vs.

M/s. ITC Ltd.

Respondent (s)

Appearance:

Shri S. Mukhopadhyay, Supdt. (A.R.) for the Appellant (s)
Shri K.S. Ravi Shankar, Advocate & Sri N. Anand, Advocate for the Respondent (s)

CORAM:

HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI V.PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision :- 04/05/2018

ORDER NO. F/O 76063/2018

Per Shri V.Padmanabhan

The present appeal is filed by the Department against the order-in-Original 14/CE/Commr./Kol-VI/2008 dated-31/12/2008 passed by the Commissioner of Central Excise, Kolkata-IV.

2. Brief facts of the case are that the respondent is engaged in the manufacture of cigarettes. For such manufacture, they procured duty paid cut tobacco from outside and availed Cenvat Credit on such cut tobacco. The respondent had declared a certain formula for the quantity of cut

tobacco used in the manufacture of cigarettes. The Department during verification noticed that a certain portion of the cut tobacco was consumed over and above quantity as per the formula recorded by the respondent. Further cut tobacco was also being cleared without duty payment describing the same as “floor sweeping”. It is the contention of assessee that such floor sweepings are wastes arising during the course of manufacture. The Department took the view that the clearance of the portion of cut tobacco as floor sweeping is to be considered as clearance of cut tobacco as such and hence, the respondent will be liable to reverse proportionate Cenvat Credit in terms of the Cenvat Credit Rules, 2004. Accordingly, show cause notice was issued for demand of duty on cut tobacco as per formula and also for reversal of a part of the Cenvat Credit availed on cut tobacco but Commissioner, in the impugned order dropped such demand and Revenue is in appeal before us mainly agitating the following grounds :

> “ i) the Adjudicating Authority has held that the ‘floor sweepings’ are not excisable. In doing so, the Adjudicating Authority has ignored that the ‘floor sweepings’ are nothing but ‘cut tobacco’ that fell down during the process of suction. Just by assigning a different name to the commodity, the nature of the commodity does not change. There is no doubt that ‘cut tobacco’ is an excisable commodity covered under SH No. 2403 99 70 of Central Excise Tariff Act, 1985 and therefore, duty liability on the item should have been discharged.
>
> (ii) The Adjudicating Authority has held that the SCN has wrongly and unlawfully invoked the extended period, being hit by limitation on account of time bar [beyond the normal (applicable) period of one year].
>
> But it has been ignored by the Adjudicating Authority that the removal of ‘cut tobacco’ in the guise of ‘floor sweeping’, was suppressed by the assessee, as could be seen from the contents of the SCN and thus the extended period of limitation was justifiably invoked in the instant SCN.
> (iii) The Adjudicating Authority has decided against the merit of the case as the ‘Appendix F’ proforma record, as per Cigarette Manual has not been considered and taken on record as a relied upon document in the SCN, and also because of absence of the authority and methodology of calculation employed for arriving at the cited figure of duty payable.

> However, these lapses cannot vitiate the SCN in demanding the Central Excise duty and Education Cess involved on the ‘cut tobacco’ removed from the factory in the guise of ‘floor sweepings’.

3. With the above background, we heard Shri S. Mukhopadhya, the ld. Representative of the Department and Shri Ravi Shankar and Sri N. Anand the ld. Advocates appeared on behalf of the respondents.

4. The ld. A.R. reiterated the grounds of appeal advanced by the Revenue whereas the same was opposed by the Ld. Advocates. They submitted that cut tobacco sweeping is nothing but waste arising during the course of manufacture of cigarettes and there is no justification of reversal of Cenvat Credit. In this connection they brought to our notice the decision of the Tribunal in respect of appellant’s own factory at Bangalore reported as ITC ltd. Vs. Commissioner of C.E. [2002 (149) ELT 116 (Tri-Bangalore) in which the Tribunal has held that there is no justification for payment of such reversal.

5. We have considered the submissions made by both the sides and facts of the case carefully in relation to the case laws cited on behalf of the respondents. Facts and circumstances are identical in the instant case with that of the earlier case (supra) where relief was granted. By following our earlier decision (supra), we find no reasons to interfere with the impugned order.

6. In the result, the appeal filed by the Department is dismissed.

(Dictated and pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)	**(V.PADMANABHAN)**
PRESIDENT	**MEMBER (TECHNICAL)**

k.b/-